

Court of Appeals, State of Michigan

ORDER

In re Steven James Corwin Jr. Minor

Docket No. 282459

LC No. 06-005993-NA

Stephen L. Borrello
Presiding Judge

Peter D. O'Connell

Bill Schuette
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The Court orders that the motion to remand is DENIED since retained counsel failed to properly support his motion with an affidavit or offer proof required by MCR 7.211(C)(1)(a) in view of the fact that the proffered affidavit was not notarized. See, e.g., *SSC Assoc Ltd Partnership v. General Retirement Sys of the City of Detroit*, 192 Mich. App. 360, 367; 480 NW2d 275 (1991) (plaintiff's failure to file legally sufficient affidavits in support of its motion was fatal). Moreover, it would appear that the proffered evidence was meant to impeach the witness in question. A new trial is unwarranted when the newly discovered evidence would merely be used to impeach a witness. *People v Davis*, 199 Mich App 502, 516; 503 NW2d 457 (1993).

Judge O'Connell respectfully dissents, he would remand this matter to the trial court for an evidentiary hearing to determine if the perjured testimony was outcome determinative.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 27 2008

Date

Sandra Schultz Mengel
Chief Clerk